United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1408

To be argued by
ELLIOT G. SAGOR

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1408

UNITED STATES OF AMERICA,

Appellee,

—v.—

G. CARMAN RIDLAND,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

G. Carman Ridland appeals from a judgment of conviction entered in the United States District Court for the Southern District of New York on March 7, 1974, after a fourteen-day trial before the Honorable Murray I. Gurfein, United States District Judge, and a jury.

On July 9, 1973, Indictment 73 Cr. 659 was filed in six counts. It charged Ridland and Johannes Steel, Dominic Bassani, Arnold Widlitz, Robert Feis and Feis Securities Co. with conspiracy to sell stock of Cadgie Taylor Co., Inc. by use of fraudulent misrepresentations in a prospectus and with five substantive counts of stock fraud in connection with such sales, in violation of Title 18, United States Code, Section 371, and Title 15, United States Code, Sections 77q(a) and 77x.

On January 4, 1974, trial commenced against Ridland, Steel and Feis.* On January 22, 1974, the jury acquitted Steel on all counts; however, on January 23, the jury found Ridland and Feis guilty on all counts.

On March 7, 1974, Ridland and Feis were each sentenced to concurrent terms of three years on each count, four months to be served in prison and the balance on probation.

Ridland is enlarged on bail pending this appeal.**

Statement of Facts

A. The Government's Case

Through the testimony of three co-conspirators, Stuart Schiffman,*** Dominic Bassani and Arnold Widlitz, which was corroborated by business records, the Government proved that Ridland and Feis secretly paid $40,000 in cash to Schiffman, Bassani and Perry Scheer, principals of Kelly, Andrews and Bradley, a broker-dealer, to induce them to sell to their customers $200,000 of the stock of Cadgie Taylor Co., a corporation Ridland controlled.

In August, 1969, Ridland, the president of Cadgie Taylor, a Montana mining corporation, filed a Registration Statement (Form S-3) with the Securities and Exchange Commission on behalf of the corporation covering 125,000 shares

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* Prior to trial Bassani entered a plea of guilty to count one of the indictment and Widlitz to a superseding information, charging him with stock fraud in connection with the events underlying the indictment in violation of Rule 10b-5. Both of these defendants then testified for the Government at the trial. The indictment was dismissed as to Feis Securities Co. with the consent of the Government.

** Feis filed a notice of appeal, but his appeal was withdrawn on June 3, 1974. He is expected to surrender shortly.

*** Schiffman is named in the Government's Bill of Particulars as an unindicted co-conspirator.

of its common stock which it planned to offer for sale to the public. The underwriter in the offering of this stock was Feis Securities Co., of 111 John Street, New York City, whose principal was the co-defendant Robert Feis (GX 32).* On June 5, 1970, the registration statement was approved by the SEC and became effective. As approved, the registration statement provided that the 125,000 shares of Cadgie Taylor stock could be sold for a period of 120 days at $2 per share on a "best efforts, all or none" basis. This meant that if all the stock was not sold within that period, the sale was to be nullified. All monies received for stock during the 120 day period were to be kept in a special escrow account at the Manufacturers Hanover Trust, 40 Wall Street, until the 125,000 shares had been "paid for", and, if all the shares were not sold and "paid for" within 120 days, that is, by October 5, 1970, all amounts collected were to be returned to the purchasers "forthwith" (GX 32A, 32B; Tr. 1514-1543).

The Cadgie Taylor prospectus warned that the stock was a "speculative" issue involving "a high degree of risk" and disclosed certain negative information about the corporation. It was therefore no surprise that there were virtually no sales reflected in the escrow account for the months of June, July and August, 1970 (GX 38a).

In September, 1970, the defendant Feis, whose responsibility it was to sell the stock, called the defendant Widlitz, who was the comptroller of F. M. Mayer and Co., a broker-dealer, and asked him to have F. M. Mayer sell Cadgie Taylor to its customers. Feis told Widlitz that, in addition to the regular selling commission, there would be a "cash payment" involved (Tr. 100, 1597-99). Widlitz declined the offer, but suggested that Fred Miller, at Kelly, Andrews and Bradley ("KAB"), which was located in Feis' building,

* "GX" refers to a Government exhibit in evidence. "Tr." refers to the stenographic transcript of the trial. A number followed by an "a" refers to the Appendix.

might be interested (Tr. 1599-1601). As it turned out, Miller and the other principals at KAB, Scheer, Bassani and Schiffman, were indeed interested (Tr. 104).

In early September Feis met with Miller, Scheer, Bassani, Schiffman and the defendant Steel, a reporter who claimed to be a substantial stockholder of Sierra Silver, a parent company to Cadgie Taylor also controlled by Ridland. Steel told the group that Feis was unable to sell all of the stock, that an additional broker was needed, and that a cash payment was available to such a broker. The parties thereafter agreed that KAB would undertake to sell 100,000 shares and Feis 25,000 shares, that the cash payment to KAB tentatively would be 20% of the $200,000 sales price (or $40,000) in addition to the regular commission,* and that final approval of the $40,000 payment would be made by Ridland before the 120 day selling period lapsed (Tr. 113-17).

Later that month, Ridland, accompanied by Feis and Steel, met with Schiffman, Bassani, Miller and Scheer at KAB's offices. At the meeting Schiffman told Ridland that Cadgie Taylor appeared to be bankrupt and he hoped it would stay around "at least a little while" after the stock was sold. Ridland contended that $40,000 was "a lot of money", but Scheer said that KAB would not do it for less and moreover, that the $40,000 was to be paid "up front", or at least held jointly, in order to insure its availability. Miller concluded by assuring Ridland that the 100,000 shares would be sold by the end of September (Tr. 123-27).

On October 1, 1970, when Feis and Steel came to KAB expecting a closing on the 100,000 shares, Miller was not there. Schiffman and Bassani, who were there, told Feis and Steel that Miller had not been at all successful in

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* The regular commission was $.10 per share, or $10,000 (GX 1, 8; Tr. 133-35).

selling Cadgie Taylor, but that they were willing to try to sell it; they claimed however, that there was no way they could do so by October 5th, the final day of the offering period. Accordingly, the four of them agreed that KAB's records would be falsified to show that all sales had been completed on October 2. Widlitz then arrived to pick up a $5,000 finder's fee that Miller had promised him, and Steel told him that Ridland was on his way from Las Vegas with the $40,000 but that, since the stock had not been sold, the deal could not be closed (Tr. 1604-05).* When Ridland finally arrived, it was agreed that a false "all sold" telegram would be sent by KAB to Feis Securities. This telegram was actually sent on October 5, 1970 (GX 9; Tr. 140-149).**

Following this meeting, Schiffman, Bassani and Scheer were able to sell 100,000 shares of Cadgie Taylor to the public, and checks totalling $200,000 were given to Feis and deposited by him in the Manufacturers escrow account in late October (GX 12, 13, 14, 15, 38).***

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* Ridland had a business address in Las Vegas, Nevada (GX 1, p. 11).

** Feis contacted the SEC in early October claiming that all the shares had already been sold. The escrow account, however, had a balance of only $12,600 on October 5, 1970 (instead of the $250,000 that should have been there if the 125,000 shares had in fact been sold by that date), and it was not until mid November, 1970, that the last deposits reflecting sales of Cadgie Taylor were made. For example, on November 17, 1970, Feis Securities deposited a check for $16,000 from Sierra Empire Mines, another company that Ridland controlled, which apparently had been enlisted to purchase Feis' allotment of the remaining unsold shares (GX 10, 11, 33, 38B-1; Tr. 1492-93).

*** In connection with KAB's sales of Cadgie Taylor in October, a copy of the prospectus was mailed to the purchaser along with the sale confirmation slip. The individuals named in Counts Two through Six of the indictment were five such buyers. Needless to say, the prospectus did not reveal that KAB was to get $40,000 in cash under the table (GX 1, 2-6; Tr. 174).

Shortly after October 20, 1970, Scheer, who wanted to see some evidence that the $40,000 existed and was available, met with Schiffman and Feis in a vault room at the Chelsea National Bank in KAB's building where Feis had a safe deposit box. There the three men removed $40,000 in cash from the box, counted it and returned the money to the box (Tr. 156-60).*

On November 5, 1970, KAB received a $10,000 check from Feis Securities for the disclosed commissions of $.10 per share for the 100,000 shares sold by it, and $40,000 in cash from the defendant Feis as its undisclosed commission. Most of the $40,000 was then placed temporarily in KAB's safe deposit box (Tr. 278-79, 938-40), but $22,000 in cash was deposited later that month in KAB's bank account and shown on the company's books as "officer loans". The $40,000 actually paid KAB on November 5 apparently came from a Cadgie Taylor bank account in Phoenix, Arizona (A. 439a).**

In March 1971, Ridland signed and filed with the SEC a Form 10K for Cadgie Taylor falsely claiming that by September 10, 1970, the company had sold 125,000 shares to the public (GX 31).

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* This $40,000 was apparently derived from the following transaction: on October 23, 1970, in violation of the escrow agreement, a certified check for $60,381 was drawn on the escrow account at Manufacturers payable to Sierra Silver in payment of a debt owed by Cadgie Taylor to Sierra Silver. That same day this check was deposited in a Sierra Silver checking account at a branch of the American Bank and Trust Co. in New York City located three blocks from the branch of the Chelsea bank where Feis had his safe deposit box and $50,000 was withdrawn from this account. Later, on November 3, 1970, after the $40,000 had been shown to Scheer, $50,000 in cahs was deposited to another Sierra Silver bank account in Phoenix, Arizona (GX 41a, b).

** On October 30, 1970, approximately $154,000 was transferred from the escrow account at Manufacturers to Cadgie

[Footnote continued on following page]

B. The Defense Case

None of the defendants testified. However, Ridland called a witness from the American Bank and Trust Company to show that the $60,381 withdrawn from the escrow account at Manufacturers on October 23, 1970, had been deposited to a Sierra Silver account at the American Bank (Tr. 1648-53). Ridland also called the bookkeeper for Cadgie Taylor and Sierra Silver, Bernice Hepola, who said there never were any "unexplained checks for withdrawals", that in her opinion the Cadgie Taylor stock was not "worthless" and that on or prior to September 10, 1970, she had actually received money for the sale of the 125,000 shares (Tr. 1890-1903); however, she did not produce any documents to substantiate her testimony, claiming that Ridland had told her that the Cadgie Taylor books and records, including cancelled checks on the Phoenix bank account, were in the possession of the individual who had recently bought a controlling interest in Cadgie Taylor (Tr. 1958-61, 1965-67).*

Taylor's bank account in Phoenix. Before this amount was transferred, the Phoenix account had a balance of $2.54. On November 3 there were two withdrawals from this account, one for $50,000 and another for $35,000, and on November 5 there was an additional $42,000 withdrawn (GX 40).

* The bank, First National Bank of Arizona, did not then photostat checks, and the Government had been unable to obtain the cancelled checks from Cadgie Taylor. On the first day of trial, prior to jury selection, the Government sought Ridland's compliance with a subpoena duces tecum served on him prior to trial calling for corporate records and cancelled checks of Cadgie Taylor. Through defense counsel, Ridland claimed that he did not know if he had such records. Arrangements were made for him to fly to Las Vegas to comply with the subpoena (Transcript of January 4, 1974, pp. 1-13; Tr. 3-5). Upon returning from Las Vegas, Ridland produced no corporate records but submitted an affidavit to the court to the effect that one Armand Mucci, the controlling owner in 1973 of Cadgie Taylor, received the records in January, 1973, when the controlling interest of Cadgie Taylor was transferred to him (Tr. 449, 1964, Court Exhibit 5).

C. The Government's Rebuttal

Armand Mucci, the controlling owner in 1973 of Cadgie Taylor, denied that he ever received any books and records, bank statements or cancelled checks of Cadgie Taylor from Ridland. In support of his testimony Mucci produced a letter from Ridland, containing an inventory of those documents which Ridland had given to Mucci, which omitted any mention of the cancelled checks (GX 46; Tr. 2002-07).

ARGUMENT

POINT I

The trial judge properly denied Ridland's motion for a mistrial which was predicated on the erroneous assumption that the jury had seen inadmissible evidence of a $35,000 withdrawal from a Cadgie Taylor bank account.

Ridland contends that because, contrary to Judge Gurfein's instructions, the jury was permitted to see a $35,000 withdrawal of November 3, 1970 on Cadgie Taylor's bank statement, he should receive a new trial. But the Court never ruled that this withdrawal should be kept from the jury and the defense was in no way prejudiced by the receipt of this evidence..

Judge Gurfein never ruled that the $35,000 withdrawal on the Cadgie Taylor bank statement should be concealed from the jury. The bank statement, GX 40a,* shows that there were two withdrawals from the Phoenix account on November 3, 1970, one for $50,000 and another one for $35,000, and one withdrawal of $42,000 on November 5.

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* See A. 439a.

When the statement was offered into evidence defense counsel asked that the $35,000 withdrawal be covered because it might lead to "speculation". Judge Gurfein denied the application, saying that he would receive it "as long as nothing is said about it with relation to Ridland" (325a).* The Government fully complied thereafter with the Court's direction. In summation, the Government argued only that the $50,000 withdrawal from the Phoenix account on November 3, the $50,000 withdrawal on October 23 from the Sierra Silver account at American Bank and Trust Company, and the $22,000 in cash deposited to the KAB bank accounts as "officer loans" in November, among other records, corroborated the testimony of its witnesses concerning the $40,000 payoff in November (Tr. 2180, 2185).** In sum, since the $35,000 withdrawal was never relied upon by the Government and, in the absence of any proof before the jury as to where the $35,000 went, Ridland suffered no prejudice from the fact of the withdrawal being submitted to the jury, the request for a mistrial was properly denied. *United States* v. *Strassman*, 241 F.2d 784 (2d Cir. 1957); *United States* v. *Sellers*, 483 F.2d 37, 46-47 (5th Cir. 1973).

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* Earlier, the Government had sought to introduce records of Ridland's personal account at the Phoenix bank, GX 42 for identification, which showed that the $35,000 had been deposited in Ridland's account the same day. Judge Gurfein excluded Ridland's personal bank account records in the absence of proof that the transfer was for an improper purpose (Tr. 1364-72, 1383-85).

** Ridland claims that a suggestion by Government counsel that the court may have asked that the $35,000 be masked (see 389a) proves that the Court had in fact made such a direction (421a-23a). While the Court debated such an action after the Cadgie Taylor bank statement was offered (see 357a lines 8-11), it never instructed that the exhibit be masked (423a lines 25-26a). Moreover the exhibit was never physically masked at any time during the trial, and defense counsel was present when the exhibit was being sent to the jury (416a, 422a).

POINT II

The trial court's conduct of the trial was fair and impartial.

Ridland attacks a number of Judge Gurfein's actions during the trial, claiming that they denied him of a fair trial. The claims are specious.

First, Ridland argues that Judge Gurfein displayed "judicial bias" when he asked questions of Stuart Schiffman, an attorney, who was the first of the Government's three principal witnesses (Defendant's Brief, p. 20). Nothing could be further from the truth. As the record amply reveals, Judge Gurfein's questions were designed merely to make terms such as "underwriter", "pink sheets", "over the counter", "market maker", etc., clear to a lay jury at the outset of the trial. See, *e.g.*, 24a lines 21-25, 26a. The meaning of these terms was never in dispute (158-60a).*

Second, defense counsel contends that he was threatened to preclude him from eliciting certain "information". But his citations to the record simply do not support his naked charge. Rather, these references show the trial court patiently dealing with defense counsel's repetitiousness (144a, line 1), his improper questions (189a, 229a lines 6-12), and his speeches before the jury (330a, 331a lines 2-5). Judge Gurfein properly gave Ridland's counsel great leeway in cross-examination, and Ridland points to no topic he failed adequately to explore (Defendant's Brief, p. 8).

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* In his charge, to which there was no claim of error on appeal, Judge Gurfein instructed the jury in the usual manner that the jury should draw no inferences as to credibility from anything the Court said (Tr. 2208, 2260-61).

Third, Ridland claims Judge Gurfein "belittled" the defense kitness Hepola. While it is true that the Court asked questions designed to clarify whether she was a bookkeeper or an accountant, and to determine the basis of her knowledge as to when the Cadgie Taylor stock was sold, these questions were well within his prerogative as a trial judge. See *United States* v. *Kaylor,* 491 F.2d 1127, 1130 (2d Cir. 1973).

Fourth, Ridland claims that when Judge Gurfein dismissed the jury for the night on January 22, the day the jury acquitted Steel, he purposely slowed the "momentum of acquittal". Not only is this claim based upon sheer speculation as to the existence of any such momentum, but, in adjourning at close to 7:00 P.M. Judge Gurfein was merely implementing his policy, which he had previously announced to the jury, that he did not like to keep a jury sitting after dark (Tr. 2328).* Furthermore, before taking this action the Court asked the members of the jury if they thought they were close to reaching any further results, and they responded that they were not (434a line 23-435a).

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* The exact time of the adjournment does not appear from the record. Counsel were called before the Court at 6:15 P.M. (Tr. 2321), and it is estimated that a little over half an hour transpired before the jury was excused for the night.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

ELLIOT G. SAGOR,
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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DIANE MUSRACA being duly sworn, deposes and says that she is employed in the office of the United States Attorney for the Southern District of New York.

That on the **12th** day of **June, 1974** she served 2 copies of the within brief by placing the same in a properly postpaid franked envelope addressed:

Irwin Klein, P.C.
Two Park Avenue
New York, NY 10016

And deponent further says that she sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Diane Musraca

Mary L. Avent

Sworn to before me this

12th day of June, 1974

MARY L. AVENT,
Notary Public, State of New York
No. 03-4500237
Qualified in Bronx County
Cert. Filed in Bronx County
Commission Expires March 30, 1975